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6 UNITED STATES DISTRICT COURT

7 DISTRICT OF NEVADA

8 GENARO RICHARD PERRY,

9 Petitioner

10 v.

11 WARDEN GABRIEL NAJERA,

12 Respondent.

Case No.: 2:23-cv-00311-GMN-EJY

**Order Directing Service of the Petition
and Denying Motion for Counsel**

(ECF No. 8)

13 The court has reviewed Genaro Richard Perry's *pro se* 28 U.S.C. § 2254 petition
14 for a writ of habeas corpus pursuant to Rule 4 of the Rules Governing Habeas Corpus
15 Cases Under Section 2254 and directs that it be served on respondents. A petition for
16 federal habeas corpus should include all claims for relief of which petitioner is aware. If
17 petitioner fails to include such a claim in his petition, he may be forever barred from
18 seeking federal habeas relief upon that claim. See 28 U.S.C. §2244(b) (successive
19 petitions). If petitioner is aware of any claim not included in his petition, he should notify
20 the court of that as soon as possible, perhaps by means of a motion to amend his
21 petition to add the claim.

22 Perry has also filed a motion for appointment of counsel. (ECF No. 8.) There is
23 no constitutional right to appointed counsel in a federal habeas corpus

1 proceeding. *Luna v. Kernan*, 784 F.3d 640, 642 (9th Cir. 2015) (citing *Lawrence v.*
2 *Florida*, 549 U.S. 327, 336–37 (2007)). Whenever the court determines that
3 the interests of justice so require, counsel may be appointed to any financially eligible
4 person who is seeking habeas corpus relief. 18 U.S.C. § 3006A(a)(2)(B). “[T]he district
5 court must evaluate the likelihood of success on the merits as well as the ability of the
6 petitioner to articulate his claims *pro se* in light of the complexity of the legal issues
7 involved.” *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983). Here, Perry’s petition
8 sets forth his claims for relief clearly, and the legal issues do not appear to be
9 particularly complex. The court concludes that counsel is not warranted.

10 IT IS THEREFORE ORDERED that the Clerk of Court file and electronically
11 serve the petition (ECF No. 1-1) on the respondents.

12 IT IS FURTHER ORDERED that the Clerk add Aaron D. Ford, Nevada Attorney
13 General, as counsel for respondents and provide respondents an electronic copy of all
14 items previously filed in this case by regenerating the Notice of Electronic Filing to the
15 office of the AG only.

16 IT IS FURTHER ORDERED that petitioner’s motion for appointment of counsel
17 **(ECF No. 8) is DENIED.**

18 IT IS FURTHER ORDERED that respondents file a response to the petition,
19 including potentially by motion to dismiss, within **90 days** of service of the petition, with
20 any requests for relief by petitioner by motion otherwise being subject to the normal
21 briefing schedule under the local rules. Any response filed is to comply with the
22 remaining provisions below, which are entered pursuant to Habeas Rule 5.

1 IT IS FURTHER ORDERED that any procedural defenses raised by respondents
2 in this case be raised together in a single consolidated motion to dismiss. In other
3 words, the court does not wish to address any procedural defenses raised herein either
4 in seriatum fashion in multiple successive motions to dismiss or embedded in the
5 answer. Procedural defenses omitted from such motion to dismiss will be subject to
6 potential waiver. Respondents should not file a response in this case that consolidates
7 their procedural defenses, if any, with their response on the merits, except pursuant to
8 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If
9 respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they will
10 do so within the single motion to dismiss not in the answer; and (b) they will specifically
11 direct their argument to the standard for dismissal under § 2254(b)(2) set forth in
12 *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural
13 defenses, including exhaustion, should be included with the merits in an answer. All
14 procedural defenses, including exhaustion, instead must be raised by motion to dismiss.

15 IT IS FURTHER ORDERED that, in any answer filed on the merits, respondents
16 specifically cite to and address the applicable state court written decision and state
17 court record materials, if any, regarding each claim within the response to that claim.

18 IT IS FURTHER ORDERED that petitioner has **45 days** from service of the
19 answer, motion to dismiss, or other response to file a reply or opposition, with any other
20 requests for relief by respondents by motion otherwise being subject to the normal
21 briefing schedule under the local rules.

22 IT IS FURTHER ORDERED that any additional state court record exhibits filed
23 herein by either petitioner or respondents be filed with a separate index of exhibits

1 identifying the exhibits by number. The parties will identify filed CM/ECF attachments by
2 the number and will file each exhibit as a separate attachment.

3 IT IS FURTHER ORDERED that, at this time, the parties send courtesy copies of
4 **any responsive pleading or motion and all INDICES OF EXHIBITS ONLY** to the
5 Reno Division of this court. Courtesy copies are to be mailed to the Clerk of Court, 400
6 S. Virginia St., Reno, NV, 89501, and directed to the attention of "Staff Attorney" on the
7 outside of the mailing address label. **No further courtesy copies are required unless**
8 **and until requested by the court.**

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11 DATED: 14 June 2023.

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15 GLORIA M. NAVARRO
16 UNITED STATES DISTRICT JUDGE
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